

October 2, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500771**

MUNEO & MIYOKO YOSHIKAWA
Code Enforcement Appeal

Location: 13607 Southeast 224th Street (Kent)

Appellant: **Muneo & Miyoko Yoshikawa**
13716 Southeast 251st Street
Kent, Washington 98042
Telephone: (253) 854-1914

King County: Department of Development and Environmental Services
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal; allow 60 days for submission of abatement/demolition plan
Department's Final Recommendation:	Deny the appeal; allow 60 days for submission of abatement/demolition plan
Examiner's Decision:	Grant the appeal (in part); allow 60 days for submission of abatement/demolition plan

ISSUES AND TOPICS ADDRESSED:

- Demolition of unsafe structure and removal of debris
- Waiver of penalty

SUMMARY OF DECISION:

The property owner's appeal of civil penalty is granted; demolition and removal of fire-damaged residence is required.

EXAMINER PROCEEDINGS:

Hearing opened: September 23, 2008
Hearing closed: September 23, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On August 24, 2007, the King County Department of Development and Environmental Services issued a notice of King County code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Muneo and Miyoko Yoshikawa. The property subject to the Notice and Order is located at 13607 Southeast 224th Street (Kent) in unincorporated King County. Muneo and Miyoko Yoshikawa are the owners of the subject property.

The Notice and Order alleged violation of the King County Code for the presence of a fire and landslide-damaged residence on the parcel, that is open to entry and constitutes an attractive nuisance and hazard.

2. A timely appeal of the Notice and Order was filed by Muneo and Miyoko Yoshikawa on September 7, 2007. The statement of appeal asserts that the house was vacated after a landslide, and was subsequently set on fire. There is no vehicle access to the property, and it will require substantial expense to demolish the residence and remove the demolition debris.
3. The appellants' former residence on the subject property was vacated following a landslide which damaged the structure. Code Enforcement Case E9800066 was opened in 1998, following the landslide. That Notice and Order alleged occupancy of a sub-standard dwelling, which had been structurally compromised. The appellants vacated the dwelling in response to that proceeding.
4. An arson fire occurred on the site in 2003, partially burning the structure. The fire was caused by a person or persons unknown to the appellants, and without the appellant's knowledge or consent.

KCC 23.36.030.b provides, "if an owner of property where a violation has occurred . . . (demonstrates) that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, such property owner shall be responsible only for abatement of the violation. . . ."

CONCLUSIONS:

1. A vacant and damaged structure is located on the subject property. This structure is the appellants' former residence; it has been severely damaged by landslide and fire. It is now an unsafe structure, and is a hazard to the public health and safety. The premises are open to entry, and constitute an attractive nuisance and hazard in violation of Chapter 16 King County Code. Correction of the violation requires the demolition and removal of the structure by the property owners, or, in lieu thereof, abatement by King County.
2. The property owner has demonstrated that the current code violation was caused by another person who was not the agent of the property owner, and who acted without the property owner's knowledge or consent. Therefore, the property owner is responsible only for abatement of the violation, and no civil penalty should be assessed against the property owner.
3. A reasonable period of time to allow the property owners to apply for a demolition permit is 60 days. A reasonable period of time to allow the property owners to accomplish the demolition, and to remove the demolition debris, is 60 days from the issuance of the permit.
4. If the property owners fail to complete the demolition and removal of the demolition debris, King County should abate the violation in the manner provided by the King County Code.

DECISION:

The appeal of Muneo and Miyoko Yoshikawa of the civil penalty assessed in the Notice and Order is granted.

The violation alleged by the Notice and Order is affirmed, and the appellants are granted 60 days from the date of this decision to apply for a demolition permit for the structure on the premises, and are granted 60 days from the issuance of that permit to complete the demolition and remove the demolition debris from the subject property, unless the foregoing time periods are extended by King County DDES.

If the appellants fail to obtain a demolition permit or complete the demolition and removal of the debris within the allowed time periods, King County may abate the violation pursuant to King County Code Chapter 23.

ORDERED this 2nd day of October, 2008.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE SEPTEMBER 23, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500771.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, representing the Department and Miyoko Yoshikawa, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for September 23, 2008
Exhibit No. 2	Copy of the Notice & Order issued August 24, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received September 7, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Notice and Order for Code Enforcement Case E9800066
Exhibit No. 6	Compliance Certificate issued for Code Enforcement Case E9800066
Exhibit No. 7	Violation letter to Mr. & Mrs. Yoshikawa dated October 10, 2005
Exhibit No. 8a	Photographs of subject property taken October 6, 2005
Exhibit No. 8b	King County GIS map of subject parcel identifying geological features
Exhibit No. 9	Photographs of subject property taken September 22, 2008

JNOC:gao/vsm
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